

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 244 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

P.P.CONTRACTOR (DECD.) L/H.R.PCONTRACTOR

Appearance:

Mr.Pranav G Desai for MR MANISH R BHATT for Petitioner
NOTICE UNSERVED for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 24/03/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal,

Ahmedabad has referred the following question for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has erred in law in holding that half of the interest income and half of the property income was only assessable in the hands of the assessee ?"

2. The matter pertains to the assessment years 1966-67, 1967-68 and 1978-79. The late father of the assessee Pestanji left a Will and Codicil dated 23rd July, 1941 as per which the assessee and his mother were entitled to receive the equal income of certain properties as specified in the Will. On the death of the assessee's mother on or about 6.4.1951, the assessee became entitled to the whole income of the testator as per the provision in clause 17 of the Will. The assessee by a deed dated 6.12.1951 which was described as a deed of assignment, assigned to his children 1/2 share of the income which the assessee was entitled to receive from the properties of his late father under the Will. On the basis of the said assignment dated 6.12.1951, the assessee had included only 1/2 share of the income from the said property in his return. The ITO rejected the claim of the assessee and included the entire income in the hands of the assessee. In appeal, the Appellate Assistant Commissioner, relying upon the decision of the Tribunal in the assessee's own case for the assessment years 1970-71 and 1971-72, allowed the assessee's claim. In appeal filed by the Revenue, the Tribunal relied on its own decision and rejected the appeal.

3. It is pointed out to us that in the case of this very assessee, reference was made on the same point in respect of the assessment years 1970-71 and 1971-72, arising from the decision of the Tribunal which the Tribunal has followed, while deciding the matter in the present case. The High Court held that after the death of the present assessee's father in April, 1951, the assessee became entitled to the entire income derived from the residuary property. The assessee had a right to receive his income during his lifetime. The assessee had therefore, a right to transfer or assign his asset or portion thereof. There was no legal provision which prohibited him from transferring or assigning his right to receive income from residuary property during his lifetime. It was held that there was nothing in the Will also which prevented him from assigning his right to receive the income. It was therefore, held that the

assessee was within his right in executing a deed of assignment on December 6, 1951 transferring or assigning his right, title and interest in half of the income from the residuary property in favour of his children. It was therefore, held that the assessee was liable to be assessed only in respect of half of the income derived from the residuary property. Applying the said decision given in the petitioner's case to the assessment years which are in question in the present proceedings, we hold that the Tribunal has not committed any error in holding that half of the interest income and half of the property income was only assessable in the hands of the assessee. The question referred to us is answered accordingly against the Revenue and in favour of the assessee. The Reference stands disposed of accordingly with no order as to costs.

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